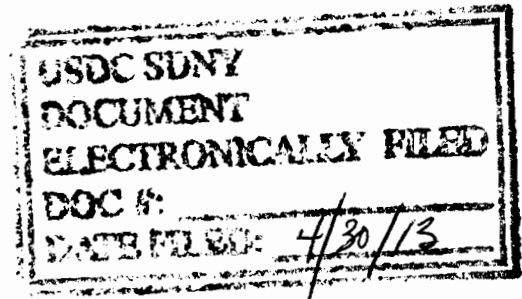


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

DANIEL KANE JR., OSCAR GONZALES,  
CHARLES MACHADIO, RICHARD BYLOTT,  
MYRA GORDON and VINCENT PACIFICO as  
TRUSTEES OF THE UNITED TEAMSTER  
FUND and as TRUSTEES OF THE UNITED  
TEAMSTER PENSION FUND "A,"



Plaintiffs,  
-against-

ORDER

12 Civ. 4720 (MGC)

THE ALPHAS COMPANY OF NEW YORK,  
INC.,

Defendant.

-----X

APPEARANCES:

DEALY SILBERSTEIN & BRAVERMAN, LLP  
Attorneys for Plaintiffs  
225 Broadway, Suite 1405  
New York, New York 10007

By: Milo Silberstein, Esq.  
Marc D. Braverman, Esq.  
Winsome Taik, Esq.

Cedarbaum, J.

On April 26, 2013, Magistrate Judge Gorenstein held an inquest on damages relating to plaintiffs' motion for a default judgment against defendant The Alphas Company of New York. On that same day, Judge Gorenstein gave an oral report and recommendation setting forth the damages that plaintiffs were entitled to, totaling \$1,249,335.05. The defendant was informed of both the inquest and the previous hearing on plaintiffs' motion for default judgment, but attended neither.

After reviewing the transcript of that report, I accept the findings and recommendation of the Magistrate Judge, with one exception: the recommendation that the plaintiffs be awarded both interest and "liquidated damages." 29 U.S.C. § 1132(g)(2)(C) provides only for the "greater of" interest and liquidated damages. The lesser number, interest of \$39,915.70, should be deducted from the total damages. Plaintiffs' motion for default judgment is therefore granted, and judgment entered against the defendant in the amount of \$1,209,419.35.

SO ORDERED.

Dated: New York, New York  
April 30, 2013

S/

MIRIAM GOLDMAN CEDARBAUM  
United States District Judge

Close Case

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 4/26/13

-----X  
DANIEL KANE, JR. et al.,

Plaintiffs,

-against-

THE ALPHAS COMPANY OF NEW YORK, INC.,

Defendant.  
-----X

: **REPORT AND RECOMMENDATION**

: 12 Civ. 4720 (MGC)(GWG)

GABRIEL W. GORENSTEIN, United States Magistrate Judge

The Court held an inquest on damages pursuant to Fed. R. Civ. P. 55(b)(2) today.<sup>1</sup> The Court heard the testimony of two witnesses, Craig Voelker and Barry Reich. It also received into evidence two exhibits and considered other documents in the record, including the Affirmation of Milo Silberstein in Support of Plaintiff's Motion for a Default Judgment Against Defendant The Alphas Company of New York, Inc., filed April 3, 2013 (Docket # 21).

At the conclusion of the hearing, the undersigned gave an oral Report and Recommendation. Plaintiff is ordering an expedited copy of the transcript of that Report and Recommendation. As stated on the record, the undersigned concluded that defendant was liable for the following damages:

- (1) Delinquent Contributions: \$14,312.55
- (2) Withdrawal Liability: \$983,579.74
- (3) Interest: \$ 39,915.70
- (4) Liquidated Damages: \$199,578.46
- (5) Attorneys' Fees and Expenses: \$11,948.60

Accordingly, the undersigned recommends that judgment be entered against the defendant in the amount of \$1,249,335.05.

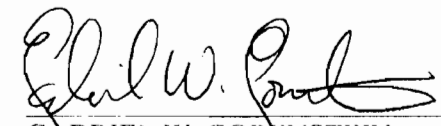
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<sup>1</sup> Plaintiff's counsel informed the Court at the hearing that defendant was informed of the inquest hearing and elected not to attend.

**PROCEDURE FOR FILING OBJECTIONS TO THIS  
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days including weekends and holidays from service of this Report and Recommendation to serve and file any objections. See also Fed. R. Civ. P. 6(a), (b), (d). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Hon. Miriam Goldman Cedarbaum, and to the undersigned, at 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Cedarbaum. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

Dated: April 26, 2013  
New York, New York

  
GABRIEL W. GORENSTEIN  
United States Magistrate Judge